IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTIETH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE B.PRAKASH RAO

WRIT PETITION NOs : 8943 of 2004,9225 of 2004 and 9480 of 2004

W.P.NO.8943 OF 2004

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Between:

1 M/s. Chowdeswary Electrical Engineering Works, Represented by its Proprietor G. Lakshminarayana Reddy, S/o. G. Chinna Obulesh Reddy, age 31 yers, 33/11 KV Substation Compound, Tadipatri, Ananthapur District.
2 M/s. Trans & Trades, Represented by its Proprietor R. Obi Reddy, S/o. T. Adi Narayana Reddy, age 40 yers, 33/11 KV Substation Compound, Penukonda, Ananthapur District.

..... PETITIONER(S)

AND

1 The Central Power Distribution Company of A.P. Ltd. (APCPDCL), representaed by its Chief General Manager, (Operation & Maintenance) Hyderabad.
2 The Central Power Distribution Company of A.P. Ltd. (APCPDCL), representaed by its Superintending Engineer, (Operation) Anantapur District.
3 M/s. ENEN Electrical Engineers (P) Ltd. rep by its Proprietor, 11-1-274, Aravind Nagar, Ananthapur Town & District.

.....RESPONDENT(S)

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an appropriate Writ, Order or Direction mostly one which is in the nature of a Writ of Mandamus declaring the action of the Respondents 1 and 2 in awarding the contracts of carrying out repairs to various capacities and makes of failed distribution

transformers (both CSP and Conventional type) available at various centers in the divisions of Anantapur District in favour of the 3rd Respondent as per LR No. SE/O/ATP/TECH/SB.Er./D.No. 219, 220 & 221, dated 01-05-2004 of the 2nd Respondent as illegal, irregular, arbitrary, unconstitutional, unreasonable, unjustified and unsustainable and direct the Respondents 1 and 2 to hold negotiations with the petitioners for awarding the contract and then to award the contract to the lowest tenderer in such negotiations and pass

Counsel for the Petitioners: MR.P.VEERA REDDY

Counsel for the Respondents: MRS.M.VINOBHA DEVI (SC FOR APTRANSCO)

W. P. NO : 9225 of 2004

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Between:

M/s. Nirmal Indurstiral Corporation, Jagmohan Behal, S/o. Late Shri N. Behal, Plot No. 6, Near Industrial Estael Hindupur, Ballary Road, Ananthapur Distirct.

..... PETITIONER

AND

1 The Central Power Distribution Company of A.P. Limited, (APCPDCL), represented by its Chief General Manger,
Hyderabad. (Operation & Maintenance), Hyderabad.
2 The Central Power Distribution Company of A.P. Limited, (APCPDCL), represented by its Superintending Engineer
Hyderabad. (Operation), Hyderabad.
3 M/s ENEN ELectrical Engineers (P) Ltd.,
11-1-274, Aravidn Nagar, Ananthapur Town & District.

.....RESPONDENT(S)

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an appropriate Writ, order or direction mostly one which is in the nature of a writ of Mandamus declaring the action of the Respondents 1 and 2 in awarding the contract of carrying out repairs to various capacities and makes of failed distribution transformers (both CSP and Conventional type) available at various centers in the division of Ananthapur District in favour of the 3rd Respondent as per LR No. SE/O/ATP/Tech/SB.Er/D.No. 219, 220 & 221. dated 01-05-2004 of the 2nd Respondent as illegal, irregular, arbitrarry, unconstitutional, unreasonable, uniustified and unsustainable and direct the Respondents 1 and 2 to hold negotiations with the Petitioner for awarding the contract and then to award the contract to the lowest tenderer in such negotiations.

Co**unsel for the Petitioner: MR.P.VEERA REDDY**

Counsel for the Respondents: SMT.M.VINOBHA DEVI, Standing counsel for AP TRANSCO

W. P. NO : 9480 of 2004

Between:

M/s.Sri Srinivasa Electrical works, rep.by its prop.
G.Srinivaqsulu S/o.Bhikshapathi,
R/o.H.No.6-3-121/B25, Ghandinagar, Ramgiri,
Nalgonda.

..... PETITIONER

AND

1 The A.P.Central Power Distribution Company Ltd., rep.by its Chief General Manager (Operation), Singareni Bhavan, Red Hill, Hyderabad.

2 Superintending Engineer (Operation), A.P.Central Power Distribution Company Ltd.,Nalgonda.

3 Divisional Engineer (Transformers), A.P.Central Power Distribution Company ltd.,Nalgonda.

.....RESPONDENT(S)

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an order, direction or writ, more particularly one in the nature of writ of Mandamus declaring the memo No.CGM/op/CPDCL/DE(OM)/AE/F.No.152/ 743 dt.25-5-2004 issued by the Chief General Manager (Operation) APCPDCL. Hyderabad the 1st respondent herein as illegal, arbitrary violative of principles of natural justice and also Article 14 of the Constitution of the India and set aside the same and pass.

Counsel for the Petitioner: MR.V.SUDHAKAR REDDY

Counsel for the Respondents: SMT.M.VINOBHA DEVI ,Standing Counsel for APTRANSCO.

The Court made the following :

COMMON ORDER:

The petitioners filed these Writ Petitions, *inter alia,* seeking a Writ of Mandamus declaring the action of the respondents in awarding contracts in terms of the tender issued earlier in favour of the

contesting third respondent herein by direct negotiations as bad, illegal and void.

The claim of the petitioners is that they are already in the very same business and attending to the repair works of the transformers of all capacities with the respondents herein. However, in pursuance of the notification No.CGMO-13/03-04 seeking tenders for carrying out repairs to various capacities and makes of failed distribution transformers (both CSP and conventional type) in the divisions mentioned therein, the last date contemplated was 07.01.2004 and opening of the tenders was scheduled on the same day at 4.00 PM. Accordingly, the petitioners and others submitted their tenders. However, even though the petitioners quoted lowest price, on opening of tenders the same was allotted to the third respondent herein by entering into a direct negotiation. No such negotiation was attempted with the petitioners herein. When the petitioners stand on the same path, question of discrimination does not arise. Hence, the entire action on the part of the respondents in awarding the contract in favour of the contesting third respondent is illegal.

In the counter affidavit, it is submitted that the petitioner in W.P.No. 9225 of 2004 did not, in fact, pay bid security amount as contemplated in terms and conditions of the tender and therefore, he is not entitled to lay any claim. Further, even the rates quoted by the petitioners were on higher side and hence, the same were not considered and it was rightly given in favour of the contesting third respondent.

Taking into consideration the submissions made and on perusal of the material, the main claim centers around whether the fact that the petitioners with their experience behind and having worked with, the respondents all along, should have been given similar such contracts, and any denial thereof and directly negotiating with the

contesting third respondent, is bad ?

According to the respondents, since it was found that the quotation of the third respondent being the lowest, the same was rightly awarded and the petitioners can not make any grievance. The petitioners, in spite of the fact that they were having similar type of works earlier with the respondents, have acceded to the tender notification issued by the respondents herein and submitted themselves by giving their offers. On opening, it was found that the tender of the third respondent was the lowest and therefore, it was accepted apart from the fact that he was also called for negotiations. In view of the fact that the petitioners did not comply the terms and conditions and their rates being on a higher side, it is not open for them to lay any claim or complain as to any discrimination. Once the petitioners have participated in the fresh tender, no claim can be laid on the past experience or the works which they had with the respondents herein. Further, having quoted on a higher side, in terms of the conditions as contemplated thereunder it is the lowest tender which has been accepted by the respondents. In view of the same, I do not find any justification in the claim made by the petitioners nor there are any merits therein.

The Writ Petition is, accordingly, dismissed. No costs.

(B.Prakash Rao, J.)

20.12.2004

DRK

To

1 The Chief General Manager.(Operation and Maintenance) Central Power Distribution Company of A.P. Ltd. (APCPDCL),
Hyderabad.
2 The Superintending Engineer (Operation)Central Power Distribution Company of A.P. Ltd. (APCPDCL), Anantapur District.
3 The Proprietor,M/s. ENEN Electrical Engineers (P) Ltd.,
11-1-274, Aravind Nagar, Ananthapur Town & District.

4. Superintending Engineer (Operation), A.P.Central Power Distribution Company Ltd.,Nalgonda.
5. Divisional Engineer (Transformers), A.P.Central Power Distribution Company ltd.,Nalgonda.

6. 2 C.D.copies